

AMENDED IN SENATE APRIL 17, 1997

AMENDED IN SENATE APRIL 8, 1997

AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 19

Introduced by Senator Lockyer

December 2, 1996

An act to amend Section 1286.2 of, and to add Sections 1280.1 and 1286.5 to, the Code of Civil Procedure, relating to arbitration.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as amended, Lockyer. Arbitration.

Statutory law, repealed by its own terms as of January 1, 1997, afforded an arbitrator the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

Existing law specifies the grounds upon which a court may vacate the award made by an arbitrator pursuant to an arbitration clause in a contract.

This bill would require a court to vacate an arbitration award under specified conditions involving standardized contracts not drafted by the consumer party, as specified.

The bill would also add a provision identical to the statute repealed on January 1, 1997, affording an arbitrator immunity from civil liability, but which will be effective indefinitely.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1280.1 is added to the Code of Civil Procedure, to read:

1280.1. An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract.

The immunity afforded by this section shall supplement, and not supplant, any otherwise applicable common law or statutory immunity.

SEC. 2. Section 1286.2 of the Code of Civil Procedure is amended to read:

1286.2. Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was corruption in any of the arbitrators.

(c) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

(d) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

(e) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

(f) An arbitrator making the award was subject to disqualification upon grounds specified in subdivision (e) of Section 1282, but failed upon receipt of timely demand to disqualify himself or herself as required by those provisions. However, this subdivision does not apply to arbitration proceedings conducted under a collective agreement between employers and employees or between their respective representatives.

(g) As provided in Section 1286.5.

SEC. 3. Section 1286.5 is added to the Code of Civil Procedure, to read:

1 1286.5. (a) In addition to any remedies and rights
2 available under Sections 1286.2 and 1286.4, a court shall
3 vacate an arbitration award if it determines all of the
4 following exist:

5 (1) The award is the result of legal error by the
6 arbitrator that has resulted in a miscarriage of justice.

7 (2) The agreement or contract with the consumer
8 party that contains a mandatory arbitration provision is
9 in a standardized contract drafted by or on behalf of the
10 nonconsumer party.

11 (3) The petition to vacate is filed by the consumer
12 party.

13 (b) For purposes of this section, a “consumer party”
14 ~~includes, but is not limited to,~~ is any of the following:

15 (1) ~~A person~~ *An individual* who seeks or acquires by
16 purchase or lease, any goods or services, including
17 financial services, as defined in Section 1761 of the Civil
18 Code, primarily for personal, family, or household
19 purposes.

20 (2) An individual who is an enrollee or subscriber in a
21 health care service plan within the meaning of Section
22 ~~1371.10~~ *1345* of the Health and Safety Code.

23 (3) An individual with a medical malpractice claim
24 that is subject to arbitration pursuant to Section 1295.

25 (4) An individual who is subject to arbitration
26 pursuant to a contract of employment.

27 (c) The provisions of this section may not be waived by
28 contract or otherwise.

29 (d) For purposes of this section, an arbitrator shall,
30 upon a written request of a party to an arbitration made
31 at the beginning of the hearing, include with his or her
32 award a written explanation of the basis for the award,
33 including findings of fact and conclusions of law.

34 (e) This section does not apply to arbitration
35 proceedings conducted under a collective bargaining
36 agreement between employers and employees or
37 between their respective representatives.